IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

CMA.No. 28 of 1998()

AS.94/1991 of I ADDL. DISTRICT COURT, PALAKKAD
IA NO.1256/73 IN OS.105/1962 of MUNSIFF COURT, ALATHUR

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APPELLANTS/RESPONDENTS 20 AND 21/RESPONDENTS 25 AND 26/LEGAL REPRESENTATIVES OF DECEASED 12TH DEFENDANT:

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1. RAJAN, S/O.CHELLAPPAN RESIDING AT PUTHEN VEEDU, KUTHANUR AMSOM DESOM, ALATHUR TALUK.

(*)2. PARAMESWARAN, SON OF CHELLAN, PUTHEN VEEDU, KUTHANUR AMSOM DESOM, ALATHUR TALUK. (DIED. LRS IMPLEADED)

3. V.M.CHANDRIKA, W/O.LATE K.C.PARAMESWARAN, PUTHEN VEEDU, KUTHANUR AMSOM, ALATHUR TALUK.

4. K.P.SAJEEV KUMAR, S/O.K.C.PARAMESWARAN, -DO- -DO-

5. K.P.PRAMOD KUMAR, -DO- -DO-

(*)ADDL.APPELLANTS 3 TO 5 ARE IMPLEADED AS THE LEGAL HRIRS OF DECEASED SECOND APPELLANT VIDE ORDER DATED 10.4.2003 ON CMP 1951/2003.

BY ADV. SRI.P.R.VENKETESH

RESPONDENTS/APPELLANTS AND RESPONDENTS 2 TO 6, 8 TO 11, 13 TO 19, 28 TO 37/PLAINTIFFS AND DEFENDANTS 2 TO 10, 15, 17 TO 24:

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1. NAVUNNY, D/O.THAYU RESIDING AT OLAPPULLY HOUSE, MATHUR, KIZHAKKETHARA, MATHUR AMSOM, ALATHUR TALUK.

(**)2. SUKUMARAN, S/O.THAYU, -DO- (DIED. LRS IMPLEADED)

3. KAMALAKSHY, D/O.THAYU, -DO- -DO-

4. YESODA, D/O.CHELLAN, RESIDING AT KOOMULLITHODI, MATHUR KIZHAKKETHARA, MATHUR AMSOM, ALATHUR TALUK.

5. SUBHADRA, D/O.CHELLAN, -DO- -DO-

6. NARAYANAN, S/O.CHELLAN, -DO-

7. PARVATHY, D/O.CHELLAN, -DO-

8. DAMAYANTHI, D/O.CHELLAN, -DO-

9. CHINNA, W/O.THANKAN, RESIDING AT KALARIKKAL VEEDU, PALLANCHATHANUR, MATHUR AMSOM DESOM, ALATHUR TALUK.

(***)10. NARAYANAN, S/O.THANKAN, -DO-(DIED. LRS IMPLEADED)

11. RAMAKRISHNAN, S/O.THANKAN, -DO-

12. SEKHARAN S/O.THANKAN, -DO-

13. MEENAKSHI, W/O.VASU, RESIDING AT KALARIKKAL VEEDU, PALLANCHATHANUR, MATHUR AMSOM DESOM, ALATHUR TALUK.

14. VALLI, W/O.PAZHANAN, -DO- -DO-

15. THANKA, W/O.KRISHNANKUTTY, DO- -DO-

16. JANAKI, W/O.NARAYANAN, RESIDING AT KALARIKKAL VEEDU, MATHUR AMSOM, PALLANCHATHANUR, ALATHUR TALUK.

17. AMBUJAKSHI D/O.NARAYANAN, -DO- -DO-

(****)18. VIJAYAN, S/O.NARAYANAN, -DO- -DO-(DIED.LRS RECORDED)

19. GOPI, S/O.NARAYANAN, -DO- -DO-

20. MALU, W/O.UNNI ALIAS RAMAYYAN, RESIDING AT KALARIKKAL VEEDU, MATHUR AMSOM DESOM, ALATHUR TALUK.

21. PREMAKUMARI, D/O.UNNI ALIAS RAMAYYAN, -DO- -DO-

22. RAJAN, S/O.UNNI ALIAS RAMAYYAN, -DO- -DO-

23. PRABHAKARAN, S/O.-DO- -DO-

24. KUMARAN, S/O.-DO- -DO-

(*****)25. MATHU, S/O.MAYANDI AND HUSBAND OF DECEASED NANI, RESIDING AT PONNATH HOUSE, AGRAHARAM, P.O.MATHUR, ALATHUR TALUK, PALAKKAD DT.(DIED. LRS RECORDED)

26. VASU, S/O.NANI, -DO- -DO-

27. MANI, S/O.NANI, -DO- -DO-

28. SUKUMARAN, S/O.NANI, -DO- -DO-

29. SULOCHANA, D/O.NANI, -DO- -DO-

ADDL.R30 TO R33 IMPLEADED:

30. PADMAVATHY, W/O.LATE SUKUMARAN, OLAPPULLY HOUSE, MATHUR KIZHAKKEKARA ,MATHUR P.O.

31. KRISHNAVENI, D/O.LATE SUKUMARAN AND W/O.RAVEENDRAN, KOOVANADU P.O., MATHUR.

32. GOPIKA, W/O. RAVEENDRAN, PALACKAPARAMBA HOUSE, KATTUSSERRY AMSOM, P.O.ALATHUR.

33. SUDHARSAN @ VAMANAN, S/O.LATE SUKUMARAN, OLAPPULLY, KIZHAKKEKARA, P.O.MATHUR

(**)ADDL.R30 TO R33 ARE IMPLEADED AS LEGAL REPRESENTATIVES OF DECEASED SECOND RESPONDENT VIDE ORDER DATED 21.8.2006 ON CMP 4253/2000.

ADDL.R34 TO R39 IMPLEADED:

34. SATHYABHAMA W/O.LATE NARAYANAN, KALARICKAL HOUSE, PALLAN-CHATHANUR, MATHUR AMSOM, ALATHUR TALUK, PALAKKAD.

35. ANITHA, D/O.LATE NARAYANAN, -DO-

36. ANIL, S/O.LATE NARAYANAN, -DO-

37. MAHESH S/O.-DO- -DO-

38. DHIKESH, -DO- -DO-

39. ARUN, -DO- -DO-

(***)ADDL.R34 TO R39 ARE IMPLEADED AS LEGAL REPRESENTATIVES OF DECEASED 10TH RESPONDENT VIDE ORDER DATED 21.8.2006 ON IA NO.225/2006.

(****)THE 16TH RESPONDENT IS RECORDED AS THE LEGAL REPRESENTATIVES OF THE DECEASED 18TH RESPONDENT AS PER ORDER DATED 19.3.1999 ON CMP 1418/1999.

(*****)RESPONDENTS 26 TO 29 ARE RECORDED AS THE LEGAL REPRESENTATIVES OF THE DECEASED 25TH RESPONDENT AS PER ORDER DATED 19.3.1999 ON CMP NO.1419/1999.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

THIS CIVIL MISC. APPEAL HAVING BEEN FINALLY HEARD ON 25/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR ,J.

C.M.A.No.28 of 1998

Dated, this the 25th day of October, 2007

JUDGMENT

This appeal is filed by respondents 20 and 21 who are the legal representatives of deceased 12th defendant challenging an order of remand. The suit was one for partition. A preliminary decree was passed. Subsequently applications were filed for passing a final decree. Final decree was also passed. In fact sharers took possession of properties also. Some of the respondents filed A.S.No.94/1991 challenging the final decree and the present appellants filed a Memorandum of Cross Objection. They also challenged the quantification of share of profits fixed by the trial court to various sharers. Lower Appellate Court considered the report of the Commissioner and also the objections filed by the parties to the suit to that commission report. The lower appellate court considered the objections and came to the conclusion that no grounds were made out to set aside the report of the Commissioner. So Exts.C15 to C21 reports, annexures and plans were accepted but remanded the case for a limited purpose. Challenging the order of remand this C.M.Appeal is filed.

2. The learned Munsiff had passed the final decree strictly in accordance with the directions issued by this Court in S.A.No.358/1988. The allottees took possession of those properties also. I do not find any reason to interfere with those concurrent findings of fact. Lower appellate court allowed the

appeal and cross appeal and remanded the final decree application for a limited extent of setting aside the share of profits fixed by the trial court to various sharers. There was an earlier final decree and parties took possession on the basis of that final decree. Lower appellate court took a view that while fixing the share of profits the trial court has not considered the possession of properties by the parties on the basis of the final decree and for that limited purpose alone the matter was remanded. It is very pertinent to note that regarding the total share of profits from the entire property the lower appellate court concurred with the findings of the trial court and confirmed the same . So the only purpose was to re-calculate the share of profits due to various persons taking into account their possession in pursuance of the final decree. That is a matter the lower appellate court itself should have been done instead of remanding the matter. I do not find any reason to remand the final decree proceedings which was originated from a suit filed in the year 1962. So the order of remand by which the lower appellate court remanded the case back to trial court for re-fixing the share of profits is liable to be set aside. Lower appellate court itself shall decide the issue with the materials on record in accordance with the directions which it had issued to the trial court and pass appropriate orders and dispose of the appeal. I also make it clear that I am not interfering with any other finding of the lower appellate court and all those findings are confirmed. The only point to be reconsidered is the share of profits due to various sharers.

In the result, appeal is allowed. The order of remand passed by the lower appellate court is hereby set aside. Lower appellate court is directed to take A.S.No.94/1991and Memorandum of Cross Objection back to file and dispose of the same as expeditiously as possible, in accordance with law. Parties shall appear before the court below on 4.12.2007.

C.M.P.No.586/1998 will stand dismissed.

K. PADMANABHAN NAIR,
JUDGE.

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K.PADMANABHAN NAIR, J.

C.M.A.No.28 of 1998

JUDGMENT

25th October, 2007.